

**LAWYER'S ADVISORY COMMITTEE
MINUTES
December 6, 2005
TRENTON, NEW JERSEY**

Chairperson Joe Casello opened the meeting with Judges Ferguson, and Lyons in attendance. Members in Attendance: Jim Waldron, Jeanne Naughton, Mary Ellen Tully, Rachel Lehr, Bunce Atkinson, Bruce Buechler, Frank Vecchione, Pat Staiano, Valerie Hamilton, Jaimie Finberg, Scott Sherman, Len Wizmur, Ed Paul, Deborah Reperowitz,

1. The minutes of the September 20, 2005 LAC meeting were approved.

2. Committee Reports:

A. Chapter 11 Rules Committee - Administrative Claims Procedure - Warren Martin/Mary Ellen Tully

This LAC Subcommittee is chaired by Warren Martin. In his absence Mary Ellen Tully reported on the status of the administrative claims procedure - proposed local rule and form. A draft version of proposed D.N.J. LAR 3003-2 *Filing Request for Payment of Administrative Claim in Chapter 11 Reorganization or Chapter 7 Liquidation Cases*, was presented (as revised 12/06/05 p.m). A form was also proposed (D.N.J. Local Form 23 (Request for Payment of Administrative Expense). The timing of this submission is in accordance with the Court's annual cycle for local rule making which would contemplate approval by the Board of Judges in March 2006.

Comments to this Administrative Fee Local Rule by members of the Board of Judges will be requested subsequent to their December Board of Judges meeting, (i.e. by approximately January 15, 2006). In turn, the LAC will schedule its next meeting just prior to the Board of Judges meeting in March (Bd of Judges to meet 3/16/05 at 10:00 a.m. in Trenton) to formalize its final version of this rule for consideration during the 2006 annual Rule Making Cycle.

This local rule will be the first of its kind in the country.

The Minutes are to reflect thanks to Warren Martin who worked over a year on creation of this proposal on behalf of his Subcommittee.

B. Fee Application Procedures - Patricia Staiano

Proposed revision of D.N.J. LAR 2016-1, *Compensation of Professionals*

Chairperson Pat Staiano reported that her Sub-Committee has done a thorough job of attempting to make a transition to a more project-based fee structure as has been

done in E.D. Pa. as well as District of Delaware. The threshold amount has been raised from \$10,000 to \$25,000 above which attorneys and accountants seeking allowances must use a summary on Local Forms 3 or 4. Some comments arose from members regarding inclusion of current 2016-1(I) and (j). The comments will be considered in the next draft of this proposed amendment to the local rule. Further work will be done on the issue of Chapter 13 Fees as a separate and distinct part of this rule. It is hoped that this proposed amendment will also be able to be presented to the Board for its approval during the 2006 Annual Rule Making Cycle. Modifications to the local forms are also contemplated by this transition. Comment on this proposal was sought from members of the community outside of the bar.

It was agreed that in addition to the two accountants that had previewed the proposed local rule, it would also be circulated for comment to Bederson and Company, as well as a couple of other firms or individuals to be selected by the Court. Once accountants' comments are received, the Subcommittee will review and possibly modify prior to formal submission of the local rule for Bd of Judges approval.

3. Clerk's Report - Jim Waldron

Web Site -

With onset of BAPCPA 650 new cases were filed. This is a drastic difference to what had been filed during the two week period prior to the Bill.

There is a new work measurement formula tied into BAPCPA for Clerk's Office employees.

Jim Waldron asked LAC members to consider their "public outreach responsibilities" as well as those of the Court. Specifically, he questioned whether there was anything in particular that members would like to see added to the Court's web site. The LAC members have been asked to think about it and get back to him with ideas. Jim explained the concept of web site design and information appearing "below the fold" and not catching the attention of the reader. We are attempting to make our web site more prominent for e filers.

Jim indicated that the NJBLF has a limited community outreach focus and that Judge Winfield in particular would like to see significant pro se assistance provided on the part of the Court. Los Angeles and Chicago Courts have pro se debtor assistance programs. This Court will continue to discuss the issue. It was suggested that the LAC website include an inquiry for improvements requested. Ideas were also discussed including press releases to advise the public that the

Court can provide assistance but not legal advice. Public outreach mission and education are in the future vis a vis the new law and its requirements.

State Bar Association, UST through its Chapter 13 Trustees, and the NJBLF were all discussed by LAC as providing possible avenues for public education. Attorneys do not want liability in terms of providing debtor education information. Certain disclosures may be available for presentation without raising liability issues.

4. Liaison Reports:

District Court - Frank Vecchione

Chief Judge Bissell retired and was replaced by Chief Judge Brown. Discussion ensued at District Court meeting about varying internal procedures for each judge. The new Chief will address that internally with the Judges in question.

Pro hac Vice Requirements - D.N.J. L. Civ. R. 101.1

Frank Vecchione reported that this Local Rule of the District Court was last amended in March 2005 to require a \$150 payment to the Clerk of the District Court in addition to the payment to the New Jersey Fund for Client Protection. Jim Waldron indicated that he had been advised of this Local Rule change and that we would be implementing a similar requirement in our Court by General Order (effective January 1, 2006) made payable to the District Court Clerk. A General Order will be prepared and the Pro Hac Vice Order will be amended.

US Trustee - no report

IRS - no report

NJ Attorney General - no report

NJ Bankruptcy Section - no report

5. Old Business

A. Chapter 13 Form Plan/Motion practice - Nona Ostrove

Discussion ensued with respect to the fact that with regard to the Form Chapter 13 Plan, there is still some confusion as to whether a separate motion needs to be filed to avoid liens impairing exemptions under section 522(f) of the Code. The new language of the General Order implementing D.N.J. LAC 3015-6 was discussed as a possible resolution. Title Companies requiring a separate order from the Confirmation Order may submit a specific proposed form or order under section 522(f).

B. Pre-signed Declarations -

Discussion ensued regarding Judge Stern's Rivera case. Given the fact that hearings are pending in this matter, a "wait and see" mode has also been adopted with respect to the pre-signed declarations issue.

C. Local Form 16

Judge Ferguson raised an issue per Judge Stern to have Local Form 16 certified. It was agreed that either the form or the attachment should be certified. In addition, there was general agreement that the Local Rule incorporating the Form might be modified to require certification. Discussion ensued regarding the nature of certifications, 28 USC section 1746 and local practice. Without proper certification, pleadings are often denied without prejudice to renew if the proper form certification is filed. Judge Ferguson has been following this practice for approx. 7 years and noted somewhat of a slow "learning curve" in practice on this issue. Certifications should require personal knowledge.

6. New Business

A. General Order Relating to Attorneys as Debt Relief Agencies

Discussion ensued regarding Order entered in the Southern District of Georgia for determination (declaratory judgment) that attorneys are not "debt relief agencies" under BAPCPA. A decision was made that in light of the pending appeal of this Order and the fact that the Office of the United States Trustee has voiced its objection to any such posture by the bar, a "wait and see" approach would be adopted. This may require a case or controversy before it can be addressed

locally.

B. Attorney Discipline/Mentors

At the suggestion of Judge Ferguson, a Sub-Committee has been formed to look into the issue of attorney problematic issues that do not rise to the level of ethics violations where stepping in with authority and the ability to mentor may potentially be helpful to the attorney, client and court. A very broad-based charge was given to this Sub-Committee to see what ideas they may come up with. District Court L. Civ. R.103.1 *Judicial Ethics and Professional Responsibility*, was referenced. Subcommittee consists of Bunce Atkinson (Chair), Len Wizmur, Rachel Lehr, Mary Ellen Tully and Judge Ferguson.

C. Standard Fees - 2014-1(j) - Chapter 13 -

There was some discussion of a recommendation to increase both the flat fee pursuant to NJ LAC 2016-1(j)(1) and the supplemental fee pursuant to DNJ LAC 2016-(j)(2). A Subcommittee of LAC members will look into this issue including, John Morton, Len Wizmur, Nona Ostrove, Jaimie Finberg, Scott Sherman, and Marie Ann Greenberg. A survey will be utilized. It is hoped that a proposal can be presented to the LAC and Bd of Judges before their next respective meetings.

D. Recommended Orders -

There will be more standardized orders proposed by the LAC. Two proposals mentioned were orders reinstating the automatic stay and comfort orders for the benefit of Sheriff's Offices. It was recognized that the new laws were extremely confusing for Sheriffs' offices.

A motion was made to adjourn the meeting. That motion was approved.

The next LAC Meeting is scheduled for a date and time to be announced prior to the March 16, 2006 Judges' Meeting.